

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



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FINAL JUDGMENT

September 1, 2015

Before

ANN CLAIRE WILLIAMS, *Circuit Judge*

No. 15-2618	NATIONAL LABOR RELATIONS BOARD, Petitioner v. JNC CONSTRUCTION, INCORPORATED, Respondent
Originating Case Information:	
Agency Case Nos: 13-CA-137507, 13-CA-137560, 13-CA-137561, 13-CA-140082 & 13-CA-143518 National Labor Relations Board	

Upon consideration of the **APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD UPON STIPULATION OF THE PARTIES FOR CONSENT JUDGMENT**, filed on July 30, 2015, by counsel for the petitioner,

IT IS ORDERED that the National Labor Relations Board's Application for Enforcement of an Order Upon Stipulation of the Parties for Consent Judgment is **GRANTED**. The attached judgment is **ENFORCED**.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No.
Petitioner	:	
	:	Board Case Nos.:
v.	:	13-CA-137507
	:	13-CA-137560
JNC CONSTRUCTION, INC.	:	13-CA-137561
	:	13-CA-140082
Respondent	:	13-CA-143518

JUDGMENT

THIS CAUSE was submitted upon the application of the National Labor Relations Board for the enforcement of a certain order on consent issued by it against Respondent, JNC Construction, Inc., its officers, agents, successors, and assigns, on July 24, 2015, in Board Case Nos. 13-CA-137507, 13-CA-137560, 13-CA-137561, 13-CA-140082 and 13-CA-143518; and upon the record in that proceeding, certified and filed in this Court enforcing the order.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by the United States Court of Appeals for the Seventh Circuit that the order of the National Labor Relations Board be, and the same is hereby enforced; and the Respondent, JNC Construction, Inc., its officers, agents, successors, and assigns shall abide by and perform the directions of the Board set forth in its order. (See Attached Order and Notice)



Judge, United States Court of
Appeals for the Seventh Circuit

NATIONAL LABOR RELATIONS BOARD

v.

JNC CONSTRUCTION, INC.

ORDER

JNC Construction, Inc., Lockport, Illinois, shall

1. Cease and desist from

- (a) Making it appear to employees that it is watching out for their union activities.
- (b) Asking employees about employee support for a union.
- (c) Instructing employees to take photographs of union representatives present on job sites or otherwise instruct employees to report the presence of union representatives on job sites.
- (d) Interfering with employees' rights to communicate with union agents by requiring employees to move from one job site location to another because union agents are present on a job site.
- (e) Threatening employees with subcontracting work, closure of the facility, discharge, or loss of benefits if they choose to be represented by or support a union or engage in activity with other employees regarding wages, hours, and working conditions.
- (f) Retaliating against employees because of their support for and activities on behalf of a union by threatening to report employees to federal immigration authorities or local police departments.
- (g) Firing employees because they exercise their right to discuss wages, hours, and working conditions with other employees or because of their union membership or support.
- (h) In any other manner, interfering with employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the following employees for any loss of pay they may have suffered by reason of the alleged discrimination against them, by payment to them in the amounts set forth opposite their names:

Alex Bustillo	\$4,256.00
Compounded Interest, as of the date of settlement	\$81.00
Excess Tax Liability	<u>\$13.00</u>
Total for Alex Bustillo	\$4,350.00

Juan Carlos Munoz	\$3,952.00
Compounded Interest, as of the date of settlement	\$75.00
Excess Tax Liability	<u>\$12.00</u>
Total for JC Munoz	\$4,039.00

Rafael Munoz	\$3,952.00
Compounded Interest, as of the date of settlement	\$75.00
Excess Tax Liability	<u>\$12.00</u>
Total for Rafael Munoz	\$4039.00

Roger Escobar	\$3,952.00
Compounded Interest, as of the date of settlement	\$75.00
Excess Tax Liability	<u>\$12.00</u>
Total for Roger Escobar	\$4039.00

The Respondent will make appropriate withholdings for each named employee. No withholdings should be made from the interest portion of the backpay. The Respondent will also file a report with the Social Security Administration allocating the payment(s) to the appropriate time periods.

The Respondent is also responsible for additional payments to reimburse the discriminatees for amounts equal to the difference in taxes owed by them upon receipt of lump sum backpay payments and the taxes which would have been owed by them if there had been no discrimination.

The Respondent is also required to submit the appropriate documentation to the Social Security Administration as set forth in IRS Publication 975 so when backpay is paid to the discriminatees, it will be allocated to the appropriate calendar quarters.

The Respondent stipulates herein that the calculated amounts for backpay, interest, and/or excess tax liability to remedy the violations of the Act will not be contested in any court proceeding, bankruptcy proceeding, or in any other forum.

The Respondent has represented to the Region/Board that it has ceased operations and ceased doing business and has insufficient funds to meet its affirmative obligations under this agreement; however, the Region/Board does not accept this assertion as a legal conclusion and will continue to pursue all avenues necessary to ascertain compliance with this Formal Settlement Agreement.

- (b) Remove from its files any/all references to the discharges of Alex Bustillo, Juan Carlos Munoz, Rafael Munoz, and Roger Escobar, and notify them in writing that the Respondent has done so and that the discharges will not be used against them in any way.
- (c) Within 14 days of service by the Region, mail copies of the attached notice marked as "Exhibit 9," in English and Spanish, to all employees of the Respondent who were employed by the Respondent at any time as of May 1, 2014. The Respondent will provide the Regional Director, through the Region's Compliance Officer Tom Porter at Thomas.Porter@nlrb.gov, written confirmation of the date of mailing and a list of names and addresses of employees to whom the Notices were mailed. Notices will be signed by a responsible official of the Respondent.
- (d) Notify the Regional Director for Region 13, in writing, within 21 days from the date of this Order, what steps the Respondent has taken to comply herewith.

EXHIBIT 9

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER
AND A CONSENT JUDGMENT OF ANY APPROPRIATE
UNITED STATES COURT OF APPEALS

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT make it appear to you that we are watching out for your union activities.

WE WILL NOT ask you about employee support for a union.

WE WILL NOT instruct employees to take photographs of union representatives present on job sites or otherwise instruct employees to report the presence of union representatives on job sites.

WE WILL NOT interfere with employees' rights to communicate with union agents by requiring employees to move from one job site location to another because union agents are present on a job site.

WE WILL NOT threaten you with subcontracting work, closure of the facility, discharge, or loss of benefits if you choose to be represented by or support a union or engage in activity with other employees regarding your wages, hours, and working conditions.

WE WILL NOT retaliate against employees because of their support for and activities on behalf of a union by threatening to and withholding their paychecks.

WE WILL NOT retaliate against employees because of their support for and activities on behalf of a union by threatening to report employees to federal immigration authorities or local police departments.

WE WILL NOT fire employees because they exercise their right to discuss wages, hours, and working conditions with other employees or because of their union membership or support.

WE WILL NOT in any other manner interfere with your rights under Section 7 of the Act.

WE WILL pay Roger Escobar, Alex Bustillo, Juan Carlos Munoz, and Rafael Munoz for the wages they lost because we fired them.

WE WILL remove from our files all references to the discharges of Roger Escobar, Alex Bustillo, Juan Carlos Munoz, and Rafael Munoz, and **WE WILL** notify them in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL compensate Roger Escobar, Alex Bustillo, Juan Carlos Munoz, and Rafael Munoz for the adverse tax consequences, if any, of receiving one or more lump sum backpay awards covering periods longer than 1 year.

WE WILL file reports with the Social Security Administration allocating backpay for Roger Escobar, Alex Bustillo, Juan Carlos Munoz, and Rafael Munoz to the appropriate quarters.

JNC CONSTRUCTION

The Board's decision can be found at www.nlr.gov/case/13-CA-137507 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

